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January 14, 2022

VIA CM-ECF

The Honorable Vernon S. Broderick, U.S.D.J.
United States District Court
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Within 30 days, the Lukoil defendants must file a letter motion explaining why these exhibits should be filed under seal. This letter motion must be consistent with my Individual Rules.

SO ORDERED:

 01/18/22
HON. VERNON S. BRODERICK
UNITED STATES DISTRICT JUDGE

Re: *In Re MTBE Products Liability Litigation* MDL No. 1358,
Master File No. 1:00-1898
This Document Relates to:
Commonwealth of Pennsylvania v. Exxon Mobil Corp., et al.
No. 1:14-cv-06228-SAS

Letter Request to File Redacted Documents Relating to Plaintiff Commonwealth of Pennsylvania's Opposition to (1) PJSC Lukoil's Motion to Dismiss For Lack of Personal Jurisdiction, (2) Lukoil Pan Americas LLC's Motion to Dismiss For Lack of Personal Jurisdiction, and (3) the Remaining Lukoil Defendants' Motion to Dismiss For Failure to State a Claim

Request to Temporarily Seal the Declaration of Molly McGinley Han.

Dear Judge Broderick:

Today, the Commonwealth of Pennsylvania is filing:

- (1) the Commonwealth of Pennsylvania's Opposition to the consolidated Motions to Dismiss filed by Lukoil North America, PJSC Lukoil and Lukoil Pan Americas;
- (2) the [Unredacted] Declaration of Molly McGinley Han filed in Support of the Commonwealth's Opposition to the Lukoil FILED UNDER SEAL; and
- (3) this Letter Motion requesting permission to file the attached [Redacted] Declaration of Molly McGinley Han in Support of the Commonwealth's Opposition to the Lukoil Defendants' Motion.

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The Commonwealth moves for permission to file the [Unredacted] Han Declaration Under Seal and to allow the attached [Redacted] Han Declaration to be filed in the public record.

The [Unredacted] Han Declaration includes nine exhibits that are related to one or more Lukoil Defendants and were either marked confidential and for “outside counsel only” by Lukoil Americas Corporation, or there is some question whether the document contains communications involving attorneys who were either a recipient, a sender, or were carbon copied (cc’ed) on the email for outside counsel only.” The Exhibits flagged for redaction are:

Exhibits 5, 9, 16, 20, 22, 28, 31, 33, and 37

The Commonwealth believes these exhibits are not privileged because the documents: (1) are not confidential, (2) are business communications, (3) involve an entity that may be defunct (i.e., Getty Petroleum Marketing Inc. (“GPMI”)), and/or (4) are not protected by privilege because the crime-fraud exception applies, which is consistent with this Court’s prior opinion in this case in *In re MTBE*, 180 F. Supp. 3d 273, 283 (S.D.N.Y. 2016) (applying crime-fraud exception to related Lukoil internal communications). Nonetheless, the Commonwealth has filed a Redacted version of the Declaration.

Thus, the Commonwealth respectfully requests this Court allow the [Unredacted] Han Declaration be Filed Under Seal and for the [Redacted] Han Declaration be placed in the public file for 30 days to provide the Lukoil defendants an opportunity to review and assert privilege or confidentiality by moving for a sealing order, if they so choose. *See* Revised Confidentiality Order dated September 24, 2004 at 14. The Commonwealth reserves the right to respond to any such motion.

The undersigned counsel has separately provided notice to counsel for the Lukoil defendants, and further, by this letter, Plaintiff gives written notice to all Lukoil Defendants of this Motion.

Thank you.

Very truly yours,

/s/ Molly McGinley Han

Molly McGinley Han

MMH/kh

cc: All counsel of record via F&SX